REMARKS

Claims 1-50 are pending in the present application. Reconsideration of the claims is respectfully requested.

I.   Non-statutory Provisional Double Patenting. Claims 1, 8, 14, 17-19, 26, 32, 35, 42, and 48

The examiner has provisionally rejected claims 1, 8, 14, 17-19, 26, 32, 35, 42, and 48 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent Application No. 09/866,251 in view of U.S. Patent 6,714,952 issued to Dunham et al. (Dunham) in view of WO 99/66401 issued to Muhlestein. This rejection is respectfully traversed.

The examiner states that claims 1-10 of U.S. Patent Application No. 09/866,251 teaches all the limitations of claims 1, 8, 14, 19, 26, 32, 42, and 48 except for responsive to receiving a request to migrate an application from the source data processing system to a destination data processing system, and initiating copying of files in the list of file from the source data processing system to a correct location on the destination data processing system, wherein the correct location is determined by examining system configuration of the destination data processing system. Applicants respectfully disagree.
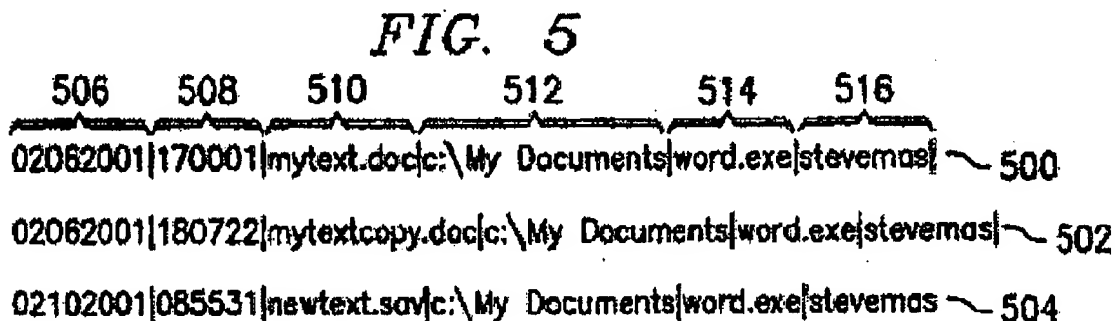
According to MPEP 804 section II "Requirements of a Double Patenting Rejection (including provisional rejections)" subsection BI entitled "Obviousness-type Non-statutory Double Patenting", factual inquires set forth in *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966) are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis. These factual inquires include "(A) determining the scope and content of a patent claim and the prior art relative to a claim in the application at issue; (B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A); (C) determine the level of ordinary skill in the pertinent art; (D) evaluate any objective indicia of non-obviousness."

Applications respectfully submit that the scope of claim 1 of the present claimed invention is different from the scope of claims 1-10 of U.S. Patent Application No. 09/866,251. In particular, the scope of the feature "responsive to receiving a request to migrate an application from a source data processing system to a destination data

processing system, querying a data store at the source data processing system containing meta data regarding files associated with the application, wherein the meta data describes associations between the files and applications that have accessed the files" is different from claim 1 of U.S. Patent Application No. 09/866,251, which recites as follows:

> 1.   A method in a data processing system for backing up data, the method comprising:
> responsive to a request to backup data associated with an application, querying a data store containing meta data regarding files associated with the application, wherein the data store includes meta data describing the files accessed by the application;
> receiving a result in response to querying the data store; and
> backing up the files identified in the result to a storage system.
> (Emphasis added).

The metadata as described in the claim only describes the files that are accessed by application. Thus, the metadata describes only information about the files themselves. The metadata does not describe associations between the files and applications that have accessed the files. Examining the relevant portion of the specification where the metadata is described, **Figure 5** of the specification is shown below:

FIG. 5

506	508	510	512	514	516

02062001|170001|mytext.doc|c:\My Documents|word.exe|stevemos| ~ 500

02062001|180722|mytextcopy.doc|c:\My Documents|word.exe|stevemos| ~ 502

02102001|085531|newtext.sav|c:\My Documents|word.exe|stevemos ~ 504

As shown in **Figure 5** above, the metadata includes date of the last file update, the time the file was last accessed in hours, minutes and second, the name of the file, the location of the file, and the application making the call for the function. Thus, scope of claim 1 as described in U.S. Patent Application No. 09/866,251 only describes information about the files, such as name of the file, location of the file, and the time of accessing the file. To the contrary, claim 1 of the presently claimed invention specifically recites that the metadata includes the association between the files and applications that have accessed the files, such as the application making the call for the

function and the name of the file. Thus, the scope of claim 1 of the presently claimed invention is narrower than the scope of claim 1 as described in U.S. Patent Application No. 09/866,251.

In addition, the content of the feature "initiating copying of files in the list of files from the source data processing system to a correct location on the destination data processing system, wherein the correct location is determined by examining system configuration of the destination data processing system" of the presently claimed invention is different from the content of claims 1-10 of U.S. Patent Application No. 09/866,251. Claim 1 of U.S. Patent Application No. 09/866,251 merely recites backing up files that are associated with the application to a storage system. While claim 4 of U.S. Patent Application No. 09/866,251 mentions that the storage system is located on a destination data processing system, nowhere in claims 1-10 of U.S. Patent Application No. 09/866,251 mentions backing up files to a correct location of the destination data processing system or to a correct location that is determined by examining system configuration of the destination data processing system. Therefore, not only is the scope of claim 1 of the presently claimed invention different from claims 1-10 of U.S. Patent Application No. 09/866,251, the content of the claim is also different.

In addition, based on claim 1 of U.S. Patent Application No. 09/866,251, a person of ordinary skill in the art would not have been led to modify the "backing up files" feature to reach "initiating copying of files in the list of files from the source data processing system to a correct location on the destination data processing system that is determined by examining system configuration of the destination data processing system", because there is no teaching or suggestion in claims 1-10 of U.S. Patent Application No. 09/866,251 of a correct location of the destination data processing system, let alone a correct location that is determined by examining the system configuration of the destination data processing system. Therefore, it would not have been obvious for a person of ordinary skill in the art to modify or combine the features of claims 1-10 of U.S. Patent Application No. 09/866,251 to reach claim 1 of the presently claimed invention.

Furthermore, the same MPEP section states that "an analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35

U.S.C. 103 obviousness determination." The examiner states in the Final Office Action that while claims 1-10 of U.S. Patent Application No. 09/866,251 may not have disclosed the feature of initiating copying of files from a source data processing system to a correct location of the destination data processing system, Dunham teaches these features in the Abstract and at column 2, lines 48-54 and at column 8, lines 1-6. In addition, the examiner states that Muhlestein teaches the feature of "wherein the correct location is determined by examining system configuration of the destination data processing system" in the Abstract, and on page 7, line 1 to page 9, line 24. Applicants respectfully disagree.

While Dunham teaches transferring metadata files that correspond to data files in the file server to a backup storage location in the backup server, there is no teaching or suggestion of determining the backup storage location in the backup server by examining the system configuration of the destination data processing system. Muhlestein also fails to teach or suggest such features. On page 7, Muhlestein teaches a backup function in which the file server determines a file system model for files in its file system (or subset of its file system) for which the backup control device is directed to perform the backup operation. Thus, the file system model that the file server examines is not a system configuration of the destination data processing system. Rather, the file system model is the file server's own file system model. This is different from the presently claimed invention, in which the system configuration of a destination data processing system, where the files are copying to, is examined instead of the system configuration of the source data processing system. Therefore, U.S. Patent Application No. 09/866,251, Dunham, and Muhlestein, either alone or in combination, fail to teach or suggest the feature of "wherein the correct location is determined by examining system configuration of the destination data processing system", as recited in claim 1 of the present invention.

Furthermore, the examiner alleges that it would have been obvious for one of ordinary skill in the art to modify the method of U.S. Patent Application No. 09/866251 in view of Dunham to use correct location that is determined by examining system configuration of the destination data processing system as taught by Muhlestein in order to store data in the right processing system. However, as discussed above, U.S. Patent Application No. 09/866251, Dunham, and Muhlestein, either alone or in combination, fails to teach or suggest a correct location that is determined by examining the system

configuration of a destination data processing system. To the contrary, Muhlestein teaches examining the system configuration of the source data processing system. Therefore, even if one of ordinary skill in the art were somehow led to combine the features of U.S. Patent Application No. 09/866251, Dunham, and Muhlestein, the resulting combination would not be "initiating copying of files in the list of files from the source data processing system to a correct location on the destination data processing system, wherein the correct location is determined by examining system configuration of the destination data processing system." To the contrary, the resulting combination would be "transferring metadata files that correspond to data files in the file server to a backup storage location in the backup server, wherein the backup storage location is determined by examining the file system model of the source data processing system." Therefore, it would not have been obvious for a person of ordinary skill in the art to modify or combine the teachings of U.S. Patent Application No. 09/866251, Dunham, and Muhlestein to reach the presently claimed invention.

Independent claims 8, 14, 17-19, 26, 32, 25, 42, and 48 recite similar subject matter also not taught or suggested, either alone or in combination, by U.S. Patent Application No. 09/866251, Dunham, and Muhlestein. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 8, 14, 17-19, 26, 32, 25, 42, and 48 under the judicially created doctrine of obviousness-type double patenting.

Moreover, the examiner has provisionally rejected claims 1, 8, 14, 17-19, 26, 32, 35, 42, and 48 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent Application No. 09/866,251 in view of U.S. Patent 6,714,952 issued to Dunham et al. (Dunham) in view of Crighton (U.S. Patent No. 6,330,570). This rejection is respectfully traversed.

The examiner states in the Final Office Action that while claims 1-10 of U.S. Patent Application No. 09/866,251 may not have disclosed the feature of initiating copying of files from a source data processing system to a correct location of the destination data processing system, Dunham teaches these features in the Abstract and at column 2, lines 48-54 and at column 8, lines 1-6. In addition, the examiner states that Crighton teaches the feature of "wherein the correct location is determined by examining

system configuration of the destination data processing system" in the Abstract, and at column 1, line 55 to column 2, line 67. Applicants respectfully disagree.

As discussed above, neither U.S. Patent Application No. 09/866,251 nor Dunham, either alone or in combination, teaches or suggests the feature of "wherein the correct location is determined by examining system configuration of the destination data processing system." Crighton also fails to teach or suggest such features. In the Abstract, Crighton teaches a backup system that includes a backup software that is configured to store data to be back up to a backup apparatus. A pre-backup check is scheduled and enacted prior to running actual scheduled backup job so that any faults that have developed can be remedied. However, nowhere in the reference does Crighton mention copying files to a correct location of the destination data processing system that is determined by examining the system configuration of the destination data processing system. In fact, Crighton fails to specify how a correct location is determined in the backup apparatus.

At column 2, lines 7-40, Crighton teaches that the pre-backup check verifies that the data can be written to specified backup apparatus by sending a signal to the backup apparatus and if the backup apparatus responds with a correct signal, the backup apparatus is operational. Another pre-backup check may be performed by reading one of the files defined by a data set and writing the file to the backup device, such as a tape drive. A failure in reading the file or writing the file to the backup device triggers a warning message. However, none of the pre-backup checks that Crighton performs determines a correct location of the destination data processing system, where the files are copying to, by examining the system configuration of the system itself. Crighton either sends a signal or read/write a file to the backup device to perform a pre-backup check. In addition, Crighton teaches away from examining the system configuration of the destination system by specifically prompting a backup operator for selection of the type and location of the tape drive (column 4, lines 19-20). Thus, Crighton's backup operator manually enters the location of the backup device. Therefore, Crighton also fails to teach or suggest the features of "wherein the correct location is determined by examining system configuration of the destination data processing system," as recited in claim 1 of the present invention.

In addition to the above, the examiner alleges that it would have been obvious to modify the method of U.S. Patent Application No. 09/866251 in view of Dunham to use correct location that is determined by examining system configuration of the destination data processing system as taught by Crighton in order to store data in the right processing system. Applicants respectfully disagree. As discussed above, U.S. Patent Application No. 09/866251, Dunham, and Crighton, either alone or in combination, fails to teach or suggest a correct location that is determined by examining the system configuration of a destination data processing system. To the contrary, Dunham fails to specify how a correct location on the destination data processing system is determined and Crighton teaches away from examining the system configuration of the destination data processing system by teaching that the backup operator manually specifies the location.

Therefore, even if one of ordinary skill in the art were somehow led to combine the features of U.S. Patent Application No. 09/866251, Dunham, and Crighton, the resulting combination would not be "initiating copying of files in the list of files from the source data processing system to a correct location on the destination data processing system, wherein the correct location is determined by examining system configuration of the destination data processing system." To the contrary, the resulting combination would be "transferring metadata files that correspond to data files in the file server to a backup storage location in the backup server, wherein the backup server is pre-backup checked by sending a signal the backup server, reading/writing a file to the backup server, and manually entering a location of the backup server by the backup operator." Therefore, it would not have been obvious for a person of ordinary skill in the art to modify or combine the teachings of U.S. Patent Application No. 09/866251, Dunham, and Crighton to reach the presently claimed invention.

Independent claims 8, 14, 17-19, 26, 32, 25, 42, and 48 recite similar subject matter also not taught or suggested, either alone or in combination, by U.S. Patent Application No. 09/866251, Dunham, and Crighton. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 8, 14, 17-19, 26, 32, 25, 42, and 48 under the judicially created doctrine of obviousness-type double patenting.

II.   35 U.S.C. § 103(a), Alleged Obviousness, Claims 1-50

The examiner has rejected claims 1-50 under 35 U.S.C. § 103(a) as being unpatentable over Dunham (U.S. Patent No. 6,714,952) in view of Min et al. (U.S. Publication No. 2002/0120634) and further in view of Muhlestein (WO 99/66401). This rejection is respectfully traversed.

As to claims 1, 8, 14, 17, 18, 19, 26, 32, 35, 42, and 48, the Final Office Action states:

> As per claims 1, 8, 14, 17, 18, 19, 26, 32, 35, 42, and 48, Dunham teaches a data processing system comprising:
> a bus system (col.1, line 16, it is implicit that there is a bus system because all computers have a bus system in order for it to operate);
> a communications unit connected to the bus system (Fig. 1, it is implicit that the bus system and communication unit are connected to each other in order for the computer to communicate with other network devices);
> a memory connected to the bus system, wherein the memory includes as set of instructions (col. 8, lines 8-10; it is implicit that memory is connected to the bus system and includes instructions because without the bus system and memory with instructions the computer would not operate);
> and a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to query a data store at a source data processing system containing meta data regarding files associated with the application (col. 2, lines 55-64), responsive to receiving a request to migrate an application from the source data processing system to a destination data processing system (col. 2, lines 48-51, col. 8, lines 1-3);
> receive a result in response to querying the data store, wherein the result includes meta data for each file associated with the application (col. 7, lines 39-49, lines 58-60); identify a list of files associated with the application from the meta data (Abstract);
> and initiate copying of files in the list of files from the source data processing system to a correct location on the destination data processing system (col. 2, lines 46-67).
> Dunham does not explicitly teach wherein the correct location is determined by examining system configuration of the destination data processing system; and wherein the data store includes meta data that describes association between the files and the application that have accessed the files.
> Min teaches wherein the meta data that describing associations between the files and applications that have accessed the files (Abstract).
> Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Dunham to

describe metadata as being an association between the files and applications that have accessed the files as taught by Min in order to determine which applications have accessed certain files.

One of ordinary skill in the art at the time the invention would have been motivated to combine Dunham and Min to provide a system to backup and restore data on a network (Dunham, Abstract).

Dunham in view of Min does not explicitly teach wherein the correct location is determined by examining system configuration of the destination data processing system.

Muhlestein teaches wherein the correct location is determined by examining system configuration of the destination data processing system (Abstract, page 7, line 1 to page 9, line 24).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to modify the method Dunham in view of Min to use correct location is determined by examining system configuration of the destination data processing system as taught by Muhlestein in order to store data in the right processing system.

One ordinary skill in the art would have been motivated to combine the teachings of Min, Dunham and Muhlestein to provide a system where different files can be stored in different locations (Muhlestein, page 1, lines 2-35).

Final Office Action dated July 26, 2005, pages 11-13.

Independent claim 1 recites:

1.   A method in a data processing system for migrating an application from a source data processing system to a destination data processing system, the method comprising:
    responsive to receiving a request to migrate an application from a source data processing system to a destination data processing system, querying a data store at the source data processing system containing meta data regarding files associated with the application, wherein the meta data describes associations between the files and applications that have accessed the files;
    receiving a result in response to querying the data store, wherein the result includes meta data for each file associated with the application;
    identifying a list of files associated with the application from the meta data; and
    initiating copying of files in the list of files from the source data processing system to a correct location on the destination data processing system, wherein the correct location is determined by examining system configuration of the destination data processing system.

Dunham, Min, and Muhlestein, either alone or in combination, fail to teach or suggest the features emphasized above. The examiner alleges that while Dunham fails to

teach or suggest a meta data that describes associations between files and applications that have accessed the files, Min teaches these features in the Abstract. Min teaches, in paragraphs 37-38, metadata fields that not only includes typical time/date, file type, file name found in the typical metadata for non-multimedia files, but also utilities that allow a user to view and search a directory containing the multimedia files, for example, location name of the image file, camera model, focal length used, light level, etc. In this way, Min states, the user may retrieve and display a set of digital photo image files according to camera model and focal length.

Thus, instead of describing association between files and applications that accessed the files, the metadata of Min describes <u>a set of criteria that a user may use to search for a set of multimedia files regardless of their image file formats</u>. The set of criteria is different from associations between the files and applications that have accessed files in that the set of criteria make no reference to applications that have accessed the files. Instead, the set of criteria merely include properties by which the user may use to search for a set of images. Therefore, Min does not teach or suggest a meta data that describes associations between files and applications that have accessed the files, as alleged by the examiner.

In addition, the examiner admits that neither Dunham nor Min teaches or suggests wherein the correct location is determined by examining system configuration of the destination data processing system, but alleges that Muhlestein teaches these features in the Abstract and on page 7, line 1 to page 9, line 24. However, in these sections, Muhlestein only teaches a file server that <u>examines its own file system</u> to determine a file system model, such as Windows NT® file system model. Muhlestein does not examine system configuration of a <u>destination data processing system</u>, where the files are being copied to. Muhlestein's determination is different from the determination made by the presently claimed invention in that Muhlestein merely examines the file system model of the <u>source</u> data processing system, not the system configuration of the <u>destination</u> data processing system. Therefore, Dunham, Min, and Muhlestein, alone or in combination, fail to teach or suggest determining a correct location by examining system configuration of the destination data processing system, as recited in independent claim 1 of the present invention.

Furthermore, it would not have been obvious for a person of ordinary skill in the art to modify Dunham and Min to use a correct location determined by the method as taught by Muhlestein because there is no teaching or suggestion in Dunham, Min, or Muhlestein of a meta data that describes associations between files and applications that have accessed the files. There is also no teaching or suggestion in Dunham, Min, or Muhlestein of determining a correct location on the destination data processing system to copy the files to by examining system configuration of the destination data processing system.

Even if a person of ordinary skill in the art were to modify or combine the teachings of Dunham, Min, and Muhlestein, the resulting combination would not be wherein the meta data describes associations between files and applications that have accessed the files and wherein the correct location is determined by examining system configuration of the destination data processing system. The resulting combination instead would be wherein the meta data describes a set of criteria that the user may use to search for a set of image files and wherein a correct location is determined by examining file system model of the source data processing system. Therefore, one of ordinary skill in the art would not have been led to modify or combine the teachings of Dunham, Min, and Muhlestein to reach the presently claimed invention.

In view of the above, Applicants respectfully submit that Dunham, Min, and Muhlestein, either alone or in combination, fail to teach or suggest the features of claim 1. Independent claims 8, 14, 17-19, 26, 32, 35, 42, and 48 recite similar features to that of claim 1 and thus, distinguish over Dunham, Min, and Muhlestein for similar reasons. At least by virtue of their dependency on claims 1, 8, 14, 17-19, 26, 32, 35, 42, and 48 respectively, Dunham, Min, and Muhlestein, either alone or in combination, fail to teach or suggest the features of claims 2-7, 9-13, 15-16, 20-25, 27-31, 33-34, 36-41, 43-47, and 49-50. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1-50 under 35 U.S.C. § 103(a).

The examiner has rejected claims 1-50 under 35 U.S.C. § 103(a) as being unpatentable over Dunham (U.S. Patent No. 5,714,952) in view of Min et al. (U.S. Publication No. 2002/0120634) and further in view of Crighton (U.S. Patent No. 6,330,570). This rejection is respectfully traversed.

As to claims 1, 8, 14, 17, 18, 19, 26, 32, 35, 42, and 48, the Final Office Action states:

As per claims 1, 8, 14, 17, 18, 19, 26, 32, 35, 42, and 48, Dunham teaches a data processing system comprising:

a bus system (col.1, line 16, it is implicit that there is a bus system because all computers have a bus system in order for it to operate);

a communications unit connected to the bus system (Fig. 1, it is implicit that the bus system and communication unit are connected to each other in order for the computer to communicate with other network devices);

a memory connected to the bus system, wherein the memory includes as set of instructions (col. 8, lines 8-10; it is implicit that memory is connected to the bus system and includes instructions because without the bus system and memory with instructions the computer would not operate);

and a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to query a data store at a source data processing system containing meta data regarding files associated with the application (col. 2, lines 55-64), responsive to receiving a request to migrate an application from the source data processing system to a destination data processing system (col. 2, lines 48-51, col. 8, lines 1-3);

receive a result in response to querying the data store, wherein the result includes meta data for each file associated with the application (col. 7, lines 39-49, lines 58-60); identify a list of files associated with the application from the meta data (Abstract);

and initiate copying of files in the list of files from the source data processing system to a correct location on the destination data processing system (col. 2, lines 46-67).

Dunham does not explicitly teach wherein the correct location is determined by examining system configuration of the destination data processing system; and wherein the data store includes meta data that describes associations between the files and the application that have accessed the files.

Min teaches wherein the meta data that describing associations between the files and applications that have accessed the files (Abstract).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Dunham to describe metadata as being an association between the files and applications that have accessed the files as taught by Min in order to determine which applications have accessed certain files.

One of ordinary skill in the art at the time the invention would have been motivated to combine Dunham and Min to provide a system to backup and restore data on a network (Dunham, Abstract).

Dunham in view of Min does not explicitly teach wherein the correct location is determined by examining system configuration of the destination data processing system.

Crighton teaches wherein the correct location is determined by examining system configuration of the destination data processing system (Abstract, col. 1, line 55 to col. 2, line 67).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to modify the method of U.S. Patent Application No. 09/866251 in view of Dunham to use correct location is determined by examining system configuration of the destination data processing system as taught by Crighton in order to store data in the right processing system.

One ordinary skill in the art would have been motivated to combine the teachings of U.S. Patent Application No. 09/866251, Dunham and Crighton to provide a system where different files can be stored in different locations (Crighton, col. 2, lines 26-39).

Final Office Action dated July 26, 2005, pages 15-17.

Dunham, Min, and Crighton, either alone or in combination, fail to teach or suggest the features of wherein the metadata describes associations between the files and applications that have accessed the files and wherein the correct location is determined by examining system configuration of the destination data processing system. The examiner alleges that while Dunham fails to teach or suggest a meta data that describes associations between files and applications that have accessed the files, Min teaches these features in the Abstract. As discussed above, Min merely teaches meta data that describes a set of criteria that the user may use to search for the a set of image files. Min does not teach or suggest meta data that describes any relationship between the files and applications that have accessed the files.

In addition, the examiner admits that neither Dunham nor Min teaches or suggests wherein the correct location is determined by examining system configuration of the destination data processing system, but alleges that Crighton teaches these features in the Abstract and at col. 1, line 55 to col. 2, line 67. However, in these sections, Crighton merely teaches performing a pre-backup check by examining a backup apparatus by either sending a signal to the apparatus and determining if the apparatus responds with the correct signal in order to determine if the apparatus is operational or reading/writing a file to the backup apparatus to determine if a failure has occurred. Crighton does not

examine the system configuration of backup apparatus to determine a correct location of the files. Instead, Crighton actually prompts a backup operator for selection of the type and location of the tape drive (column 4, lines 19-20). Therefore, Dunham, Min, and Crighton, either alone or in combination, fail to teach or suggest wherein the correct location is determined by examining system configuration of the destination data processing system, as recited in claim 1 of the present invention.

Furthermore, it would not have been obvious to one ordinary skill in the art at the time of the invention to modify the method of Dunham in view of Min to use correct location is determined by examining system configuration of the destination data processing system as taught by Crighton in order to store data in the right processing system. As discussed above, there is no teaching in either Dunham or Min of a meta data that describes associations between files and applications that have accessed the files. In addition, there is no teaching or suggestion in Dunham, Min, or Crighton of examining system configuration of the destination data processing system to determine a correct location. To the contrary, Crighton teaches either sending a signal to the backup device, reading/writing a file to the backup device, or the backup operator manually entering the location of the backup device. Therefore, one of ordinary skill in the art would not have modified or combined the teachings of Dunham, Min, or Crighton to reach the presently claimed invention.

In view of the above, Applicants respectfully submit that Dunham, Min, and Crighton, either alone or in combination, fail to teach or suggest the features of claim 1. Independent claims 8, 14, 19, 26, 32, 35, 42, and 48 recite similar features to that of claim 1 and thus, distinguish over Dunham, Min, and Crighton for similar reasons. At least by virtue of their dependency on claims 1, 8, 14, 19, 26, 32, 35, 42, and 48 respectively, Dunham, Min, and Crighton, either alone or in combination, fail to teach or suggest the features of claims 2-7, 9-13, 15-16, 20-25, 27-31, 33-34, 36-41, 43-47, and 49-50. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1-50 under 35 U.S.C. § 103(a).

The examiner has rejected claims 1-50 under 35 U.S.C. § 103(a) as being unpatentable over Burns (U.S. Patent No. 6,088,694) in view of Min et al. (U.S.

Publication No. 2002/0120634) and further in view of Muhlestein (WO 99/66401). This rejection is respectfully traversed.

As to claims 1, 8, 14, 17, 18, 19, 26, 32, 35, 42, and 48, the Final Office Action states:

> As per claims 1, 8, 14, 17, 18, 19, 26, 32, 35, 42, and 48, Burns teaches a data processing system comprising:
> a bus system (Fig. 10, it is implicit that there is a bus system because all computers have a bus system in order for it to operate);
> a communications unit connected to the bus system (Fig. 10, it is implicit that the bus system and communication unit are connected to each other in order for the computer to communicate with other network devices);
> a memory connected to the bus system, wherein the memory includes as set of instructions (Fig.10; it is implicit that memory is connected to the bus system and includes instructions because without the bus system and memory with instructions the computer would not operate); and
> a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to query a data store at a source data processing system containing meta data regarding files associated with the application (Abstract), responsive to receiving a request to migrate an application from the source data processing system to a destination data processing system (col. 4, lines 33-67);
> receive a result in response to querying the data store, wherein the result includes meta data for each file associated with the application (col. 11, lines 30-67); identify a list of files associated with the application from the meta data (col. 11, lines 30-67);
> and initiate copying of files in the list of files from the source data processing system to a correct location on the destination data processing system (col. 4, lines 33-67).
> Burns does not explicitly teach wherein the correct location is determined by examining system configuration of the destination data processing system; and wherein the data store includes meta data that describes association between the files and the application that have accessed the files.
> Min teaches wherein the meta data that describes association between the files and the application that have accessed the files (Abstract).
> Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Burns to describe metadata as being an association between the files and applications that have accessed the files as taught by Min in order to determine which applications have accessed certain files.

One of ordinary skill in the art at the time the invention would have been motivated to combine Burns and Min to provide a system to backup and restore data on a network (Burns, Abstract).

Burns in view of Min does not explicitly teach wherein the correct location is determined by examining system configuration of the destination data processing system.

Muhlestein teaches wherein the correct location is determined by examining system configuration of the destination data processing system (Abstract, page 7, line 1 to page 9, line 24).

Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to modify the method Burns in view of Min to use correct location is determined by examining system configuration of the destination data processing system as taught by Muhlestein in order to store data in the right processing system.

One ordinary skill in the art would have been motivated to combine the teachings of Min, Burns and Muhlestein to provide a system where different files can be stored in different locations (Muhlestein, page 1, lines 2-35).

Final Office Action dated July 26, 2005, pages 19-21.

The Final Office Action alleges that while Burns does not explicitly teach wherein the metadata describes associations between the files and application that have accessed the files, Min teaches these features in the Abstract. As discussed above, Min only teaches metadata fields that describe a set of criteria that a user may use to search for a set of multimedia files regardless of their image file formats. The set of criteria is different from associations between the files and applications that have accessed files in that the set of criteria make no reference to applications that have accessed the files. Instead, the set of criteria merely include properties by which the user may use to search for a set of images. Therefore, Min does not teach or suggest a meta data that describes associations between files and applications that have accessed the files, as alleged by the examiner.

In addition, the examiner admits that neither Burns nor Min teaches wherein the correct location is determined by examining system configuration of the destination data processing system, but alleges that Muhlestein teaches these features in the Abstract and on page 7, line 1 to page 9, line 24. However, as discussed above, Muhlestein only examines the file system model of the source data processing system, not the system configuration of the destination data processing system. Therefore, Burns, Min, and

Muhlestein, alone or in combination, fail to teach or suggest determining a correct location by examining system configuration of the destination data processing system, as recited in independent claim 1 of the present invention.

Furthermore, it would not have been obvious for a person of ordinary skill in the art to modify Burns and Min to use a correct location determined by the method as taught by Muhlestein because there is no teaching or suggestion in Burns, Min, or Muhlestein of a meta data that describes associations between files and applications that have accessed the files. There is also no teaching or suggestion in Burns, Min, or Muhlestein of determining a correct location on the destination data processing system to copy the files to by examining system configuration of the destination data processing system.

In view of the above, Applicants respectfully submit that Burns, Min, and Muhlestein, either alone or in combination, fail to teach or suggest the features of claim 1. Independent claims 8, 14, 19, 26, 32, 35, 42, and 48 recite similar features to that of claim 1 and thus, distinguish over Burns, Min, and Muhlestein for similar reasons. At least by virtue of their dependency on claims 1, 8, 14, 19, 26, 32, 35, 42, and 48 respectively, Burns, Min, and Muhlestein, either alone or in combination, fail to teach or suggest the features of claims 2-7, 9-13, 15-16, 20-25, 27-31, 33-34, 36-41, 43-47, and 49-50. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1-50 under 35 U.S.C. § 103(a).

III.   Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: September 26, 2005.

Respectfully submitted,

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